Supreme Court, U.S.
FILED
01 945 DEC - 7 2001
OFFICE OF THE CLERK

No. _____

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**IN THE**

**SUPREME COURT OF THE UNITED STATES**

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T.S.,

Petitioner,

v.

INDEPENDENT SCHOOL DISTRICT NO. 54,
STROUD, OKLAHOMA

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On Petition For Writ of Certiorari
To The United States Court of Appeals, Tenth Circuit

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# PETITION FOR WRIT OF CERTIORARI

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ALLEN MITCHELL, OBA #6264
P. O. Box 190
Sapulpa, Oklahoma 74067
918-224-5750

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24 pp

## INTRODUCTORY STATEMENT

T.S. is a disabled person entitled to certain services under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq. T.S. requested a due process hearing on the failure of the school district to provide all of the procedural safeguards required by IDEA. The due process hearing was denied and T.S. asked the Federal District Court for the Western District of Oklahoma to overturn that decision in an administrative appeal. The District Court upheld the refusal of a due process hearing on April 10, 2000. T.S. appealed the decision of the District Court to the Tenth Circuit Court of Appeals, which vacated the judgment of the District Court on September 10, 2001, holding that since the thrust of T.S.'s claim was procedural, there was not enough substantive basis for the District Court to take jurisdiction to hear the initial administrative appeal.

CITATION OF DECISION APPEALED FROM

U.S. Court of Appeals, 10th Circuit No. 00-6165
2001 10CIR 1054
265 F.3d 1090

QUESTION PRESENTED FOR REVIEW

**Did the Appeals Court err in denying that the District Court had jurisdiction to hear an administrative appeal of a due process claim under the IDEA?**

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## PETITION

### I. STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction to hear this matter, which is an appeal of a decision of the Tenth Circuit Court of Appeals issued on September 10, 2001. That decision vacated the finding of the Federal District Court for the Western District of Oklahoma on a matter brought to the District Court on administrative appeal under the Individuals with Disabilities Education Act of 1990 ("IDEA"), 20 U.S.C. §1400 et seq. The IDEA grants the right of access to the Federal Courts at 20 U.S.C. 1415(i)(2).

### II. STATEMENT OF THE CASE

Plaintiff/Appellant, T.S., was a student provided services by defendant under the terms of the Individuals with Disabilities Education Act of 1990 ("IDEA"), 20 U.S.C. §1400 et seq. T.S.'s educational program was spelled out in his Individualized Educational Plan ("IEP"), which was reviewed at least annually by the IEP team, including administrators, teachers, T.S., and his parents. Although two IEP team meetings were convened in the Spring semester of 1999, T.S.'s senior year, neither of these meetings was an exit IEP meeting, nor did either of these meetings focus on the issue of T.S.'s graduation and the requirement therefore.

On the last day of school in the Spring of 1998, T.S. delivered to the defendant a request for a due process hearing challenging whether the defendant was providing T.S. with a free and appropriate public education ("FAPE"). The request was referred to a hearing officer who claimed that T.S. had, by the time the request was served, fulfilled all the requirements for regular graduation and the officer denied the request for a hearing, taking the position that T.S.'s senior year was technically completed when the request for hearing was served and he was at that time no longer due any services to provide a FAPE; since he was not due any services, a due process hearing officer, even if he found for T.S., could not order any remedy in the form of services; and thus T.S. was precluded from arguing that the defendant had failed, prior to his completion of the school year, to provide him with a FAPE.

Plaintiff/Appellant came to the District Court appealing this administrative action, identified as Due Process Hearing No. 1670 by the Oklahoma State Department of Education. Plaintiff

had alleged that he had the right to an "exit IEP meeting" prior to his graduation from the school district/Defendant's high school, that he had the right to transition services to his post-graduation life and that he had the right to notice of graduation as a change in placement. The Defendant alleged that the student's graduation precluded an examination of the issue of whether student had the necessary IEP review and transition planning and whether he had adequate notice of graduation under IDEA. Defendant asked the court to affirm the decision of the hearing officer.

The District Court agreed with the Defendant and upheld the findings of the hearing and appeals officers, denying the student a due process hearing on the matter. The finding was appealed to the Tenth Circuit Court of Appeals, which vacated the District Court's finding, determining, instead, that T.S. had made no substantive claim that his graduation was invalid and thus Defendant's procedural failures were immaterial.

## III. ARGUMENT

### 1. The proper venue for initiating a substantive claim in regard to the validity of his graduation was the "Exit IEP" that T.S. was denied.

According to the regulations of the State of Oklahoma, an IEP meeting must be held before graduation to review graduation requirements and evaluate the extent to which the student has met those requirements.

> When a student with disabilities is expected to complete graduation requirements and to receive a high school diploma, the IEP team should convene, at an appropriate time before graduation, to review the IEP ensuring that graduation requirements have been met and that the goals and objectives in the IEP will be completed. The IEP Review (SDE Form 8) may be utilized for this purpose. Graduation is considered to be a change of placement fulfilling the LEA's obligation to provide FAPE. Upon graduation, eligibility for special education and related services ceases. For students with disabilities, this change in placement requires all appropriate procedcural safeguards, including prior written notice to parents and access to due process proceedings, as necessary. *Policies and Procedures* at 80.

It is in this "Exit IEP" procedure that any claim that graduation was not appropriate should have been raised.

However, T.S. was denied this process, and thus the opportunity to make the substantive claim that graduation was premature.

**2. T.S.'s remedy for the school district's failure to provide the required "Exit IEP" was a "due process" hearing which T.S. was denied.**

> According to the IDEA, the parents of a student served under this statutes terms have the right to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. 20 U.S.C. 1415(b)(6)

This opportunity to complain takes the form of a due process hearing.

> Whenever a complaint has been received under subsection (b)(6) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency. 20 U.S.C. 1415(f)(1)

T.S. requested this due process hearing, but the school district denied it based on their claim that he had already graduated and was due no services. This was the heart of the school's defense in the District Court. The Tenth Circuit

acknowledged that there were unsettled factual questions in regard to the school's claim that T.S. filed his request for a hearing after he had graduated, but that court refused to order those issues clarified.

> [T.S.] thus arguably submitted the request [for due process hearing] prior to graduation *and* possibly prior to meeting the requirements for graduation, thereby establishing the need for the procedural safeguards he desires. Were we required to address this issue, we perhaps should have to remand for a determination whether T.S. had in fact graduated before submitting his request. However, these factual determinations are unnecessary because nowhere in the district court or on this appeal has T.S. explicitly contested his graduation or made a viable claim of entitlement to post-graduation relief. *Opinion* at ¶18.

Since T.S. had not **already** challenged his graduation, the court here erroneously denied him the due process hearing which was the statutory "doorway" to the IEP meeting which state regulations required to allow him to make that very challenge. This is a true "Catch 22" situation.

## IV. CONCLUSION

The issue in this matter is really very s .nple: Did the School District comply with the law regarding Exit IEP meetings and due process hearings under the terms of the Individuals with Disabilities Education Act of 1990 ("IDEA") 20 U.S.C. §1400 et seq. and the regulations of the Oklahoma Department of Education. The answer is a resounding "NO". The regulations are specific that graduation with a regular diploma is a change in placement and an Exit IEP meeting is required to examine the progress of the student in the light of the impending graduation. *Policies and Procedures* 80.

The Tenth Circuit erroneously found that T.S. is due no exit IEP meeting because he is graduating with a regular diploma, ignoring the fact that T.S. is graduating with a regular diploma because there was no exit IEP meeting wherein he might have formally challenged the appropriateness of a regular diploma. In effect, the court asserts that T.S. has no basis to

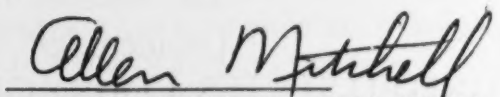
appeal to the court because he has not shown that he has been denied a FAPE, but T.S. is not in the position to assert that he has been denied a FAPE without the assessment that should have been made by his Exit IEP.

The Appeals Court stresses that the school's failures are merely procedural and as such fail to impact the substance of T.S.'s FAPE . But these procedures exist for a reason: to give the student and the parents the opportunity to participate in and challenge the process at every step of the way. Procedure in this case has a significant substantive impact. Without providing T.S. and his parents with the opportunity to examine whether he should have been graduated with a regular diploma, the defendant has short circuited the system. Procedure **does** matter. And in this case, school's failure to adhere to the procedure spelled out in statute and regulation have left T.S. without the opportunity or forum to argue that he was denied a FAPE. The Tenth Circuit's rejection of jurisdiction on the basis of its substantive/procedural dichotomy results in a denial of T.S.'s

rights under IDEA.

This court is asked to grant T.S.'s Petition for Certiorari.

Respectfully Submitted,



ALLEN MITCHELL, OBA #6264
P. O. Box 190
Sapulpa, Oklahoma 74067
918-224-5750

# T.S. v. INDEPENDENT SCHOOL DIST. NO. 54

2001 10CIR 1054

265 F.3d 1090

Case Number: 00-6165

Decided: 09/10/2001

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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T.S., Plaintiff-Appellant

v.

INDEPENDENT SCHOOL DISTRICT NO. 54, STROUD, OKLAHOMA, Defendant-Appellee.

Appeal from the United States District Court for the Western District of Oklahoma

(D.C. No. CIV-99-1616-W) Before EBEL, MCKAY, and CUDAHY,* Circuit Judges.

CUDAHY, Circuit Judge.

¶1 T.S. was a high school student who was entitled to certain services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. His education program was part of an Individualized Educational Plan (IEP) under which Independent School District Number 54 provided T.S. with a free and appropriate public education (FAPE). See 20 U.S.C. § 1414(d). T.S. appeals the denial of a due process hearing on the failure of the school district to provide the procedural safeguards required by the IDEA. We find that neither we nor the district court have jurisdiction over this appeal, and we therefore vacate the judgment of the district court.

¶2 The IDEA guarantees that children with disabilities have access to "a free and appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ." 20 U.S.C. § 1400(c). To meet this goal, the IDEA provides federal funding to state and local agencies and requires them to provide each child with an IEP. An IEP is a written statement that includes such matters as the child's level of educational performance, annual goals, services to be provided to the child and the like. See 20 U.S.C. § 1414(d). A school district satisfies its obligation to provide a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Board of Educ. v. Rowley, 458 U.S. 176, 203 (1982). Parents have the right to seek review of any decisions affecting their child's education through a due process hearing conducted by the state educational agency. See 20 U.S.C. § 1415(f)(1); Honig v. Doe, 484 U.S. 305, 311-12 (1988).

¶3 At the beginning of his senior year at Stroud High School, T.S. requested a due process hearing from the Oklahoma State Department of Education on the grounds that the school district had denied him a FAPE. The matter was assigned to a hearing officer, Mark L. Reed. At the hearing, T.S. alleged that the school district had denied him a FAPE because his IEP did not identify a weakness in his typing skills and did not address his preferred modifications for his English and horticulture classes. Reed found in favor of the school district, and T.S. appealed. In April 1999, the appeal officer affirmed Reed's decision. He held that T.S.'s IEP was appropriate, needed no modification and exceeded the school district's obligations under the IDEA. Although he had a right to do so, see 20 U.S.C. § 1415(i)(2)(A), T.S. did not appeal this decision to the federal district court.

¶4 That same month, a team meeting regarding T.S.'s IEP was held. This was apparently the second team meeting of that year, but it was not an "exit IEP meeting" and, T.S. argues, it did not focus on the issue of transition services for his post-graduation life.

¶5 The school in regular course concluded that T.S. had successfully completed all of his academic requirements to allow him to graduate. Yet on May 19, 1999, the last day of school, T.S. delivered a request for a due process hearing to the school district. He also sent the school district a

letter, dated May 18, claiming that his IEP was insufficient and that, therefore, the April team meeting had been improperly conducted. The school district concluded that T.S. had graduated before the request for a due process hearing was received and thus he was due no further relief under the IDEA. The hearing officer agreed with this position, and concluded that he lacked jurisdiction to hold a due process hearing on the issue. T.S. again appealed, and the appeals officer affirmed that decision. T.S. then asked the district court to order a due process hearing, and that request was denied. The court concluded that the administrative decisions to deny T.S.'s requests for a due process hearing were proper. T.S. now appeals.

¶6 Our first task is to determine whether we have jurisdiction over this case. If a student has graduated from high school and does not contest his graduation, the case is moot. See Board of Educ. v. Nathan R., 199 F.3d 377, 381 (7th Cir. 2000). Once a student has graduated, he is no longer entitled to a FAPE; thus any claim that a FAPE was deficient becomes moot upon a valid graduation. See id.; see also Neshaminy Sch. Dist. v. Karla B., 25 I.D.E.L.R. 725, 727 (E.D. Pa. 1997). This rule applies, of course, only where a student does not contest his graduation, and where he is seeking only prospective—rather than compensatory—relief.

¶7 We therefore only consider T.S.'s claims in light of the remote possibility that they could be construed as a challenge to T.S.'s graduation from Stroud High School, and the chance that they seek compensatory educational services. The difficulty here is the murkiness of T.S.'s claims. While we doubt that he seriously challenges his graduation, and we also question that he seriously seeks some sort of compensatory relief, there is an inkling of those possibilities lurking in T.S.'s various arguments. However, it is just an inkling—and that is hardly enough to overcome the apparent mootness of his claim. For T.S. was apparently prepared for, actually sought and was properly deemed eligible for graduation from high school at the end of his senior year. This conclusion is bolstered by the school district's noting that T.S. was attending college after his high school graduation and that he achieved a 3.6 grade point average during his first college semester—facts T.S. does not contest.

¶8 T.S.'s only clear request here is for a due process hearing, and, at least in

connection with a suggestion of an improper graduation, we have jurisdiction to consider such a purely procedural claim—but only if it is connected with substantive relief. For a claim based on deprivation of a due process hearing and/or other procedures, to be cognizable, must be linked with a consequent loss of substantive benefits. Here, these deprivations must involve loss of qualification for graduation. This loss would import defects in the educational program such that T.S. had yet to meet certain requirements for graduation from the district. Thus, T.S. would have to argue that his graduation was invalid. It is difficult to find any such contentions in T.S.'s submissions on this appeal.

¶9 Nevertheless, we shall examine T.S.'s arguments to determine whether they arguably call for the invalidation of his graduation and for compensatory relief. We review the decision of the district court de novo, applying the same standard of review to the hearing officer's determination as did the district court. Murray v. Montrose Cy. Sch. Dist., 51 F.3d 921, 927 (10th Cir. 1995). Thus, we actually apply a modified de novo review, which entails an independent review of the evidence, and "a decision based on the preponderance of the evidence, while giving 'due weight' to the administrative proceedings below." Id. (quoting Doe v. Board of Educ., 9 F.3d 455, 458 (6th Cir. 1993), cert. denied, 511 U.S. 1108 (1994)).

¶10 The crux of T.S.'s argument is that graduation constitutes a "change in placement" under the IDEA, and that therefore the school district was required to give him formal notification of the impending graduation, an exit IEP meeting and notice of his available options related to the proposed change in placement. See 34 C.F.R. 300.122(a)(3)(iii). T.S. also argues that local educational agencies must, before determining that a child is no longer a child with a disability eligible for services, evaluate or reevaluate the child. See 20 U.S.C. § 1414(c)(5). Gone from his claims are the allegations in his initial due process hearing requests, and his main chance of contending that he contests the propriety of his graduation.[1] First, T.S. argues that notice of his impending graduation should have been given. See 34 C.F.R. 300.122(a)(3)(iii) ("Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice . . . "). However, T.S. does not claim that this lack of notice rendered his graduation invalid. By failing to directly challenge the validity of his

graduation, T.S. essentially concedes both that the claimed procedural defect was harmless and that the appeals officer had no jurisdiction to hear his claim. See Nathan R., 199 F.3d at 381 (finding that a student's IDEA claim became moot once he graduated and was no longer entitled to services).[2]

¶11 T.S. also contends that there was a requirement for an "exit meeting," of which he was deprived. If there were such a requirement, that requirement was not met and T.S.'s graduation, as a result, might not have been authorized; arguably he might thereby allege a substantive deprivation. But, as will appear, T.S.'s argument does not really add up to such a claim. For T.S. argues that, at the allegedly required exit meeting, the student's education program must be reviewed to ensure that graduation is appropriate. See Policies and Procedures for Special Education in Oklahoma 80 (1993). But there is no such requirement under the IDEA. He cites 20 U.S.C. § 1414(c)(5), which states that "[a] local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability." But the regulation implementing that section specifically states that the prescribed evaluation is not required before a termination of benefits due to graduation with a regular high school diploma. 34 C.F.R. § 300.534 (West 2001). T.S. attempts to find support in the Oklahoma State Department of Education handbook, Policies and Procedures for Special Education in Oklahoma, but neither party indicates whether the provisions of this handbook are legally binding. Even assuming that the handbook creates an entitlement to an "exit meeting" under Oklahoma law (which would be quite a leap, and one not sustainable on the current record), we still fail to see any substantive deprivation resulting from the alleged procedural defect. Hence, there is no basis for compensatory relief, or for an impliedly invalid graduation.[3]

¶12 Third, T.S. argues that, in the absence of an exit IEP meeting and adequate notice of an impending change in placement, the school district should have convened a due process hearing to address any deficiencies. This conclusion is justified, T.S. argues, because the IDEA requires local educational agencies to provide an opportunity for students and parents to "present complaints with respect to any matter relating to the identification.

evaluation, or educational placement of the child . . . ." 20 U.S.C. § 1415(b)(6). This "opportunity" must take the form of a due process hearing. 20 U.S.C. § 1415(f)(1). Again, T.S. has alleged no substantive deprivations related to the alleged procedural defect. He apparently views a due process hearing as a sort of discovery device to identify possible substantive deprivations that he has no obligation to point to in advance. In the present circumstances, we think this is an unrealistic approach without some accompanying challenge to graduation for graduation deprived him of his right to a due process hearing. And T.S. has not argued that he was not qualified to graduate or that procedural defects denied him a FAPE, and that he therefore is entitled to compensatory relief.[4] We conclude that T.S. has waived any such substantive claim.

¶13 Even if we were to assume that T.S. was challenging his graduation certainly a questionable assumption), T.S. has waived any argument that the school district denied him a FAPE because he has not made such a contention on appeal. It is well-settled that, without a claim that the FAPE was deficient, procedural defects are not actionable. See Erickson, 199 F.3d at 1123 ("[A] school district's failure to comply with statutory IEP content requirements did not amount to a substantive deprivation, so there was no violation of the student's right to a FAPE.") (citing Urban v. Jefferson Cy. Sch. Dist. R-1, 89 F.3d 720, 727 (10th Cir. 1996)); O'Toole, 144 F.3d at 707; see also Doe v. Defendant I, 898 F.2d 1186, 1190-91 (6th Cir. 1990) (declining to "exalt form over substance" by holding that technical deviations from procedural requirements render an IEP invalid). Procedural defects alone do not constitute a violation of the right to a FAPE unless they result in the loss of an educational opportunity.

¶14 T.S.'s only explanation for his lack of a substantive claim is that he is not in a position to assert denial of a FAPE because he cannot know this without the aid of a due process hearing or an exit evaluation. But he does not argue that the alleged procedural mistake was itself a deprivation of a FAPE. Thus, he necessarily does not argue that the deprivation caused his graduation to be improper. Even if we were to stretch the language of T.S.'s brief, we still could not glean from it a claim of substantive deprivation. The closest thing to a substantive claim appears in T.S.'s memorandum to the district court. There, he wrote: "Higher education institutions beyond

high school are not required to provide accommodations that are not documents [sic] in the student's IEP." This may imply that—regardless whether T.S. properly graduated—he is still entitled to some service from the school district in his post-secondary life. Conceivably, such a request could amount to a demand for prospective relief that was within this court's jurisdiction. However, we are aware of no legal support for T.S.'s contention. Post-secondary institutions that receive federal funding are required to allow students with disabilities to receive the benefits of post-secondary education. See 34 C.F.R. § 104.43 (West 2001). But there is no requirement of documentation by way of the student's IEP in high school to establish the student's eligibility for post-secondary accommodation. We cannot devise a substantive claim from T.S.'s argument when he has failed to clearly articulate such a demand.

¶15 T.S. also makes a murky argument implying that he failed to obtain necessary "transition services," but does not identify what such services might be. In any event, any such services are a request for prospective relief. Thus, they are no longer the responsibility of the school district, whose obligations ceased upon T.S.'s graduation. See Daugherty v. Hamilton Cty. Sch., 21 F.Supp.2d 765, 774 (E.D. Tenn. 1998) (plaintiff not entitled to post-secondary services where she did not contest the adequacy of her FAPE or her graduation); Chuhran v. Walled Lake Consolidated Sch., 839 F.Supp. 465, 473-74 (E.D. Mich. 1993), aff'd, 51 F.3d 271, 1995 WL 138882 (6th Cir. 1995). T.S., if still requiring services, may seek accommodations from his post-secondary institution under the Rehabilitation Act, 29 U.S.C. § 504. See also 34 C.F.R. § 104.43 (West 2001).

¶16 Much has been made of the timing of T.S.'s final due process hearing request. Had T.S. contested his graduation, or shown entitlement to some post-graduation services, the timing issue might have been sticky. The request for a due process hearing came on the day of T.S.'s graduation. The school district cites clearly established law that its obligations to T.S. ceased upon graduation. "The obligation to make FAPE available to all children with disabilities does not apply with respect to . . . [s]tudents with disabilities who have graduated from high school with a regular high school diploma . . . ." 34 C.F.R. § 300.122(a)(3)(i) (West 2001). Thus, if T.S. had

properly graduated, the hearing officer would not have had jurisdiction over his claims and he would properly have dismissed T.S.'s case. The request for a due process hearing was arguably made after T.S. had completed his educational program, and thus was entitled to no further services. This was the assumption made by the district court: "At the time T.S. submitted his requests, he had completed all requirements necessary for his secondary education. He was therefore no longer entitled to the protections and benefits of the IDEA, and in particular, no longer entitled to a due process hearing." Order at 9. "The obligation to make FAPE available to all children with disabilities does not apply with respect to . . . [s]tudents with disabilities who have graduated from high school with a regular high school diploma." 34 C.F.R. § 300.122(a)(3)(i) (West 2000). The high school IDEA obligations cease once the student has completed the general graduation requirements. See Chuhran, 830 F.Supp. at 473-74. The Code of Federal Regulations simply states that a student who has "graduat[ed] with a regular high school diploma" is no longer eligible to receive special educational benefits. 34 C.F.R. § 300.122(a)(3)(i). The district court found it "undisputed that T.S. has graduated from Stroud High School with a regular high school diploma, and that he did so prior to requesting the due process hearing that is the subject of the instant complaint." Order at 8-9.

¶17 In any event, the question of the specific point in time at which the due process hearing request became effective is immaterial. T.S. presumably mailed his request for a due process hearing prior to the last day of school (May 19) since it was received by the school district on May 20. He thus arguably submitted the request prior to graduation and possibly prior to meeting the requirements for graduation, thereby establishing the need for the procedural safeguards he desires. Were we required to address this issue, we perhaps would have to remand for a determination whether T.S. had in fact graduated before submitting his request. However, these factual determinations are unnecessary because nowhere in the district court or on this appeal has T.S. explicitly contested his graduation or made a viable claim of entitlement to post-graduation relief.

¶18 Whether we have jurisdiction of T.S.'s claims or not is a close question since his claims might be construed (if he contests the validity of his graduation) as seeking compensatory relief. They would then be denied on

the merits for the reasons we have set forth. We believe, however, that the substantive basis for T.S.'s requests is so thin, and a possible challenge to his graduation so elusive, that we think the case is moot.

¶19 For the foregoing reasons, we VACATE the judgment of the district court.

FOOTNOTES

[*]The Honorable Richard D. Cudahy, United States Circuit Judge for the Seventh Circuit, sitting by designation.

[1]T.S. originally claimed, inter alia, that all areas of his disability were not addressed by the IEP goals and objectives; testing indicated his weakness in "word attack," and the school has failed to include this in his IEP; and all areas of T.S.'s suspected disability were not tested. And in his June 28 letter, he most clearly questioned the propriety of his graduation:

The school cannot neglect its obligations and stultify the requests of the student until 'graduation' happens and the school issues a 'regular diploma.' Again, in this case the school claims the student has graduated. But that is on paper only, a paper issued by the school. The procedural requirements, notice, and due process rights have not been afforded. The student has not properly and lawfully graduated."

None of these allegations appear in T.S.'s argument on appeal, and even if they did, we are uncertain whether even these are sufficient to produce a substantive claim or a sincere challenge to his graduation.

[2]Apparently, the school district concedes that neither T.S. nor his parents received the required formal written notice of eligibility for graduation. Yet, even if T.S. argued that this defect rendered his graduation invalid, he could not succeed. For this is, at best, a technical procedural defect, and does not constitute a failure to provide T.S. with a FAPE. See Erickson v. Albuquerque Pub. Sch., 199 F.3d 1116, 1120 n.4 (10th Cir. 1999). If there has been no substantive deprivation, procedural defects do not amount to a denial of FAPE. See O'Toole v. Olathe Unified Dist. Sch. No. 233, 144 F.3d 692, 707 (10th Cir. 1998).

[3]We need not decide whether Oklahoma's purported "exit meeting" requirements create an entitlement of which T.S. was deprived. We note, however, that the facts before us seem to present a picture of a school

district earnestly (and successfully) attempting to comply with the IDEA. [4]In his reply brief, T.S. does state that "[u]nder Oklahoma special education regulations, T.S. cannot lawfully graduate without an exit IEP meeting." Appellant's Reply Br. at 2 (citing Policies and Procedures for Special Education in Oklahoma at 80). But we need not consider arguments raised for the first time in a reply brief. Codner v. United States, 17 F.3d 1331, 1332 n.2 (10th Cir. 1994). Such arguments are considered waived. Id. And, in any event, we doubt that T.S. is seriously challenging his graduation here—every other aspect of his briefs and his statements at oral argument indicate that he is only seeking an exit IEP meeting, and nothing more.